

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Colorado Public Utilities Commission Petition)	CC Docket No. 96-45
To Redefine The Service Area of)	
CenturyTel of Eagle, Inc.)	
In the State of Colorado)	

**REPLY COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ hereby submits its reply comments in the above-captioned matter. NTCA supports CenturyTel of Eagle, Inc.'s (CenturyTel's) opposition to the Colorado Public Utilities Commission's (CPUC) Petition to redefine CenturyTel's service area to fit Western Wireless' objectives. Redefinition will harm rural customers by allowing cream skimming and duplication of universal service support, which is contrary to the Act. There is much uncertainty surrounding the universal service portability rules and the potential for waste that exists because of vagueness in the rules. The Commission should therefore deny the CPUC's petition until it has had an opportunity to clarify its rules.

I. INTRODUCTION

On August 6, 2002, the CPUC filed a petition with the Federal Communications Commission (Commission or FCC) requesting the Commission's consent to allow the CPUC to redefine CenturyTel's service area within the state of Colorado for purposes of

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 555 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members also provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of

determining federal universal service obligations and mechanisms.² On August 26, 2002, the Commission issued a Public Notice seeking comments on the CPUC proposal to designate CenturyTel's 53 individual wire centers as 53 separate service areas for purposes of distributing universal service support.³ On September 13, 2002, CenturyTel filed comments opposing the CPUC petition. NTCA files these reply comments in support of CenturyTel's opposition to the CPUC petition.

II. THE COMMISSION SHOULD DENY THE CPUC'S REQUEST TO REDEFINE CENTURYTEL'S SERVICE AREA.

The Commission should not redefine the service area served by CenturyTel. The law requires an eligible telecommunications carrier (ETC) to provide services supported by universal service throughout the entire service area for which ETC designation is received.⁴ Section 214(e)(5) provides that for an area served by a rural telephone company, the term "service area" means the company's study area. Therefore, if a competitor receives ETC designation for an area served by a rural telephone company, it must offer service throughout the company's entire study area. The "service area" may be comprised of something other than the company's study area only if the Commission and the State establish a different definition, after taking into account the recommendations of a Federal-State Joint Board.

1934, as amended (Act). And all of NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc.*, CC Docket No. 96-45, (August 6, 2002).

³ *Public Notice, In the Matter of the Colorado Public Service Commission's Petition to Redefine the Service Area of CenturyTel of Eagle, Inc. in the State of Colorado*, CC Docket No. 96-45, DA 02-2087 (released August 26, 2002).

⁴ 47 U.S.C. §214(e)(1).

A. Redefining Rural Study Areas May Irreparably Harm Rural Telephone Companies And The Customers They Serve

When the Joint Board evaluated this issue, it recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, and with good reason. The Joint Board stated that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize “cream skimming” by competitors.⁵ “Cream skimming” is minimized since competitors must provide service throughout the rural telephone company’s study areas and cannot serve only the lowest cost portions of a rural telephone company’s study area.

The argument that it is not “cream skimming” when a wireless carrier provides service in those areas where it is licensed to provide service is not necessarily true. The argument does not address the fact that “cream skimming” may occur whether or not the wireless licensee chooses which area it serves. It is entirely possible that the lowest cost portion, or the area with the highest concentration of business and/or residential customers within a rural study area, is the only area the wireless carrier is licensed to serve. This inadvertent or accidental “cream skimming” by a wireless carrier is no less harmful than intentional “cream skimming,” and can do substantial damage to the rural telephone company and its remaining customers.⁶ Ultimately, it sets a dangerous precedent to allow a wireless carrier to serve just a portion of a rural ILEC’s study area. At best, the customers outside of the wireless carrier’s licensed territory may be forced to pay higher rates to make up lost revenue and suffer decreased service quality; at worst, it

⁵ *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd 87, 179-180 (1996).

⁶ The Commission has not yet clarified the meaning of “capture” and therefore competing ETCs receive support for service to the same customer. When and if the Commission defines the term, “cream

may destroy a rural telephone company. The Commission has a duty to consider the adverse effect on rural customers regardless of the competitive carrier's good or bad intentions.

The potential harm of service area redefinition may not be avoided when a rural ILEC disaggregates its study area.⁷ Disaggregation was not intended to address a situation in which a wireless carrier is exempt from its universal service obligations for much of a rural carrier's service area. This year is the first time rural ILECs have had the ability to disaggregate and target high-cost support below the study area level. Whether study area disaggregation made by some rural ILECs will achieve the results expected by the FCC remains untested and unproven.

III. THE COMMISSION SHOULD REFRAIN FROM ACTING ON THE CPUC PETITION UNTIL QUESTIONS ABOUT THE UNIVERSAL SERVICE SUPPORT ARE ANSWERED.

Western Wireless seeks ETC designation specifically for the purpose of receiving universal service support. The core purpose of universal service support has always been and continues to be helpful to telephone companies in high-cost areas to make necessary investments in the infrastructure and to assure that rural consumers have reasonably-priced, quality telecommunications services. There is a considerable amount of uncertainty about the implementation of the portability rules and the Commission should refrain from acting on the CPUC petition until the uncertainties are resolved.

Commissioner Abernathy has indicated that the Commission is planning a rulemaking to

skimming" by ETC's with no carrier of last resort (COLR) obligations will result in higher per unit costs for the customers of carriers with COLR obligations.

⁷ *Id.*

focus on the question of whether commercial mobile radio service providers should receive universal service support based on ILEC costs.⁸

With the creation of the Interstate Common Line Support (ICLS) mechanism as part of the MAG Order, rural companies have become more reliant on universal service support to recover their costs. On July 1, rural carriers began to receive a portion of their common line costs from ICLS that was previously recovered in interstate access charges. The Commission's rules, however, subject ICLS to the same portability rules as the federal high cost fund.

The ICLS rules are also the subject of a petition for reconsideration.⁹ In its petition for reconsideration, NTCA pointed out that ETCs seeking ICLS are not required to demonstrate their eligibility to receive ICLS, nor are they required to show that support meets the use and sufficiency requirements in Section 254(e) of the Act.¹⁰ NTCA requested that the FCC review and revise its rules and the definition of "competitive neutrality."

Furthermore, Section 54.307(a)(4) of the Commission's rules requires that the amount of universal service support provided to an incumbent LEC be reduced by an amount equal to the amount provided to a competitive ETC for the lines that it "captures" from the incumbent. The Universal Service Administrative Co. (USAC), in charge of

⁸ *Separate Statement of Commissioner Kathleen Q. Abernathy, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02J-01, p. 41 (rel. Jul. 10, 2002).

⁹ *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, *National Telephone Cooperative Association Petition for Reconsideration* (filed Dec. 31, 2001).

¹⁰ Section 254(e) of the Act states that "[a] carrier that receives such support [referring to universal service] shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. §254(e).

implementing the rule, asked the Commission for guidance on this rule in February of 1999.¹¹ USAC questioned whether the term “capture” means only instances where the subscriber abandoned the incumbent LEC’s service for the competitor’s service, or whether it includes instances where the subscriber adds service from the competitor in addition to the incumbent’s service.¹²

This loophole in the rules has resulted in wireless carriers receiving significant amounts of duplicative universal service support. There is currently no accounting to distinguish what wireless ETC lines/loops have been “captured” from rural ILECs. The ambiguity in the term “new” is also creating confusion. In some rural ILEC service areas, wireless ETC loop counts exceed the number of lines served by the ILEC and in certain very high cost zones wireless carriers are seeking total annual support far in excess of the support received by the ILEC. It is not apparent that these excessive wireless loop counts (which are in fact billing addresses) represent service to customers that do not now or did not previously receive the federally supported services from the ILEC. In Washington State alone, competitive ETCs in the third quarter of 2002 reported more loop counts than ILECs in 11 zones.¹³ Furthermore, USAC’s May 2, 2002, filing shows that the annualized projected high cost support to competitive ETCs has grown from \$4.6 million in the first quarter of 2001 to \$76.4 million in the third quarter of 2002.¹⁴

¹¹ See, Letter from Robert Haga, Secretary & Treasurer of USAC to Ms. Irene Flannery, Chief, Accounting Policy Division, FCC, regarding Clarification of Section 54.307, dated February 11, 1999, See Attachment hereto.

¹² See, *NTCA’s Petition for Expedited Rulemaking to Define “Captured” and “New” Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to 47 C.F.R §54.307, et.seq.* (Filed July 26, 2002), Attachment A.

¹³ *Id.*, Attachment B.

¹⁴ *Id.*, Attachment C.

The issue of what constitutes a “captured” customer will significantly impact the size of the fund and the amount of support available to incumbents and competitors alike. It may also influence a carrier’s decision of whether or not to seek ETC status and invest in the infrastructure necessary to provide service. The decisions on these and other related issues will dramatically impact the size of the fund and who is eligible to receive support. Given the importance of the issue, the Commission should deny the CUPC petition to redefine CenturyTel’s service area until it has undergone a comprehensive review of its rules governing the portability of universal service funds.

IV. CONCLUSION

For the above stated reasons, the Commission should deny the CUPC petition to redefine CenturyTel’s service area.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ L. Marie Guillory
L. Marie Guillory
(703) 351-2021

By: /s/ Daniel Mitchell
Daniel Mitchell
(703) 351-2016

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
703 351-2000

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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 02-2087 was served on this 27th day of September 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

Gail Malloy

Gail Malloy

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8B201
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Qualex International Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Anthony Marquez
First Assistant Attorney General
State Services Section
Colorado Public Utilities Commission
1525 Sherman Street, 5th Floor
Denver, CO 80203

Jeffrey S. Glover
CenturyTel of Eagle, Inc.
P.O. Box 4065
Monroe, LA 71211-4065

Calvin Simshaw, Esq.
CenturyTel of Colorado, Inc.
805 Broadway
Vancouver, WA 98660

Arthur Martinez
CenturyTel of Eagle, Inc.
P.O. Box 8597
Pueblo, CO 81001

Barry L. Hijort
Colorado Telecommunications
Association
P.O. Box 300
Littleton, CO 80160

Craig D. Joyce
Walter & Joyce, P.C.
N.E. Colorado Cellular, Inc.
2105 York Street
Denver, CO 80205

David A. LaFuria, Esq.
Lukas, Nace, Gutierrez & Sachs,
Chartered
N.E. Colorado Cellular Inc.
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Larry Aisenbrey
Vice President/General Manager
N.E. Colorado Cellular, Inc.
1224 W. Platte Avenue, P.O. Box 339
Ft. Morgan, CO 80701

Robert Nichols
Western Wireless Holdings Co.
2060 Broadway, Suite 2000
Boulder, Colorado 80302

Mark J. Ayotte
Western Wireless Holding Co.
Briggs and Morgan, P.A.
2200 First National Bank Building
Saint Paul, Minnesota 55101

Karen Brinkmann, Esq.
Tonya Rutherford, Esq.
Latham & Watkins
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304